



## Australian Government

### International Air Services Commission

#### DECISION

<b>Decision:</b>	<b>[2009] IASC 222</b>
<b>Variation of:</b>	<b>[2008] IASC 101</b>
<b>The Route:</b>	<b>Indonesia</b>
<b>The Applicant:</b>	<b>Ozjet Airlines Pty Ltd (in Administration) (ACN 108 659 972) (Ozjet)</b>
<b>Public Register File:</b>	<b>IASC/APP/200933</b>

#### 1 The application

1.1 On 29 September 2009, the Commission received a letter from Strategic Airlines Pty Ltd (ACN 131 128 571) advising that the Strategic Aviation Group Pty Ltd (ACN 133 247 800) had recently acquired Ozjet from the Administrator of Ozjet. Strategic Airlines advised that Ozjet was the subject of a Deed of Company Arrangement and is owned by Strategic Global Pty Ltd, a wholly-owned subsidiary of Strategic Aviation Group Pty Ltd. Strategic Airlines Pty Ltd is also a wholly-owned subsidiary of Strategic Global Pty Ltd.

1.2 Strategic Airlines sought the transfer to it of the 408 seats of capacity per week held by Ozjet under Determination [2008] IASC 101. (This determination authorises the capacity to be used for services between Perth, Sydney, Melbourne and Brisbane and points in Indonesia under the Australia – Indonesia air services arrangements). Strategic Airlines planned to operate twice per week between Brisbane and Denpasar using an Airbus A330 aircraft with a seating capacity of 229 seats. Strategic advised that, as a total of 458 seats were required to operate the services, it planned to seek an additional 50 seats per week under the “spill-over” provisions of the Australia – Indonesia air services arrangements.

1.3 The services were initially planned to commence in December 2009 but in later advice the airline advised that it plans to operate one service per week from March 2010, adding a second weekly service dependant on market demand.

1.4 The Commission published a notice on 6 October 2009 inviting submissions about the transfer application. Submissions were received from HeavyLift Cargo Airlines (6 October 2009), Tourism Queensland (9 October 2009) and the Deed Administrator of Ozjet (7 December 2009).

1.5 On 7 December 2009, Ozjet provided advice to confirm that the application was made on behalf of Ozjet as the holder of the capacity the subject of the proposed transfer.

1.6 All public material supplied by the applicant is filed on the Register of Public Documents. Confidential material provided to the Commission is filed on the Commission's Confidential Register.

## **2 Summary of submissions**

2.1 Tourism Queensland said that supporting air access to airports in Queensland was of particular importance to Tourism Queensland. The authority said that Strategic Airlines' application held benefits for Queensland by offering a full-service wide-body operation, proving to consumers an alternative to the narrow-body aircraft operated by Jetstar and Pacific Blue Australia on the Bali – Brisbane sector. Tourism Queensland was also keen for Strategic Airlines to be granted "spill-over" capacity in addition to the transfer sought, to give it sufficient capacity to operate twice weekly services. This would be more suitable for the promotion of a variety of holiday packages.

2.2 HeavyLift Cargo Airlines stated that Strategic Airlines was not entitled to transfer capacity from Ozjet, as Ozjet was subject to a Deed of Company Arrangement. The capacity was an asset of Ozjet and, as such, would require the Deed Administrator's consent to the transfer.

2.3 The Deed Administrator provided confidential advice concerning the proposed transfer. This advice contained the administrator's consent to the transfer of capacity from Ozjet to Strategic Airlines.

## **3 Commission's assessment**

3.1 Section 25 (1) of the *International Air Services Commission Act 1992* (the Act), states that the Commission must, having conducted a review to decide a transfer application, make a decision varying the determination concerned in a way that gives effect to the variation requested. However, the Commission must not do so if it is satisfied that the allocation, as varied, would not be of benefit to the public (section 25(2)).

3.2 Paragraph 4 and paragraph 10 of the Minister's policy statement contain the criteria relevant to the Commission's consideration of this application. Under paragraph 4, the use of Australian entitlements by a carrier that is reasonably capable of obtaining the necessary approvals (4(b)(i)) and of implementing its proposals (4(b)(ii)) is of benefit to the public. Paragraph 10 makes it clear that approvals which encourage speculative activity would not be of benefit to the public. Further, except in exceptional circumstances, approvals should not be given that would have the effect of allowing a carrier that has never exercised an allocation to transfer that allocation, or has only exercised it for less than a reasonable period. Six months would usually represent a reasonable period.

### **Paragraph 4 issues**

3.3 In relation to paragraph 4, Strategic Airlines is a prospective new carrier which has not previously been designated or licensed as an Australian international airline. In line with its usual practice for intending new airlines, the Commission wrote to the

Department of Infrastructure, Transport, Regional Development and Local Government (the Department) seeking its views on whether it considered Strategic Airlines to be reasonably capable of obtaining the approvals necessary to operate. The Department replied on 14 December 2009. It noted that Strategic had applied for an international airline licence, but said that a number of items were incomplete. This related to advice on safety and timetable approvals. Strategic had recently obtained approval for its Transport Security Program. The Department said that, while Strategic holds a current Air Operator's Certificate, it does not authorise operations to Indonesia, although Strategic had advised it would apply for this authorisation in January 2010. The Department also said that Strategic was currently in the process of being designated on the Indonesia route. In concluding, the Department considered that Strategic is reasonably capable of obtaining the designation, licensing and operational approvals necessary to operate services on the Indonesia route.

3.4 The Commission also analysed additional material provided by Strategic, particularly in relation to its ability to implement its proposals. This included an assessment of the applicant's aviation-related experience, business plan and other commercial information provided to the Commission. Strategic Airlines provided a significant amount of commercial-in-confidence material in support of its claims that it is capable of implementing international services successfully. The Commission assessed the information in detail.

3.5 The Commission notes that the Strategic Aviation group is well established and the proposed operations by Strategic Airlines are of a modest scale. The directors and senior staff have considerable experience in the international airline business. The Strategic Aviation Group is in a sound financial position. The business plan demonstrates understanding of the market to be served. While there is a significant level of competition on the Brisbane – Denpasar sector, which is served by Pacific Blue Australia and Jetstar (via Darwin), Strategic Airlines offers a direct service using wide-body aircraft, with full service in a two-class configuration. It therefore provides clear product differentiation from the incumbent operators. There is also currently no further capacity available for allocation on the Indonesia route, so there is presently no scope for existing operators to increase capacity in competition with Strategic Airlines, other than by switching it from other sectors.

3.6 Taking account of its assessment and the advice received from the Department, the Commission concludes that Strategic Airlines meets the paragraph 4 criteria. This means that there is public benefit arising from the use of the entitlements.

### **Paragraph 10 issues**

3.7 Turning to the paragraph 10 provisions of the Ministers' policy statement, the Commission notes that Ozjet utilised the capacity in question from the period from mid-June 2008 to 5 May 2009, a period exceeding the six months indicated in the Minister's policy statement. Although the capacity has remained idle since that time the Commission was aware that Ozjet was in administration and that there was the possibility of the sale of the company.

3.8 Following the 29 September 2009 letter from Strategic Airlines advising of the

purchase of Ozjet by the Strategic Group and seeking the transfer of capacity from Ozjet, then the submission from HeavyLift concerning the administration of Ozjet, there was subsequent contact between the Commission and Strategic and with the Deed Administrator of Ozjet relating to the status of the capacity held by Ozjet. The Commission deferred its consideration of the transfer issue until those issues were resolved between the parties. Subsequently on 7 December 2009, the Deed Administrator advised that he consented to the proposed transfer. Following this advice, the Commission was satisfied that there was no impediment to the transfer of the capacity. The Commission is satisfied that there is no speculative element to the transfer application. As noted, the capacity was previously exercised by Ozjet for well over six months. The transfer is between two subsidiaries of the same company.

3.9 The proposed transfer represents an efficient use of capacity on the Indonesia route (with all Australian capacity now allocated by the Commission) and the capacity transferred is intended to be used by Strategic Airlines from about March 2010, which is as soon as practicable.

3.10 The Commission finds, in accordance with the requirements of Section 25 of the Act, that there would be no reduction in public benefit through allowing the transfer sought and will vary the Determination as sought by Ozjet.

3.11 The Commission notes that Strategic Airlines would require a further 50 seats per week to operate the second of its planned two weekly A330 services. There is no further capacity available for allocation by the Commission to Australian international carriers. This means that Strategic would need to seek approval from aeronautical authorities to draw from the 150 seats per week available under the flexibility provisions of the air services arrangements between Australia and Indonesia. The Commission understands that Qantas has received timetable approval from the Department to utilise a number of these additional seats. However, there should be sufficient seats remaining for Strategic to seek approval from the aeronautical authorities.

#### **4 Decision [2009] IASC 222**

4.1 In accordance with section 25 of the Act, the Commission varies Determination [2008] IASC 101, as requested by Ozjet, by transferring from Ozjet to Strategic Airlines the allocation of 408 seats of capacity per week made to Ozjet under this determination.

Dated: 17 December 2009

Philippa Stone  
Member Presiding

Ian Smith  
Member